

DEPARTMENT OF EMPLOYMENT SERVICES
NOTICE OF PROPOSED RULEMAKING

The Acting Director of the District of Columbia Department of Employment Services, pursuant to the authority set forth in sections 7 and 17 of the Minimum Wage Revision Act of 1992 (Act), effective March 25, 1993 (D.C. Law 9-248; D.C. Code § 32-1006), and Mayor's Order 93-114, dated July 27, 1993, hereby gives notice of the intent to take final rulemaking action to adopt the following amendment to Chapter 9 (Wage-Hour Rules) of Title 7 (Employment Benefits) of the District of Columbia Municipal Regulations (DCMR). A new section 918 (Enhanced Professional Security) would be added to comply with the provisions of the Enhanced Professional Security Amendment Act of 2008, effective March 20, 2008 (D.C. Law 17-114; 55 DCR 1276).

Final rulemaking action to adopt the amendment shall be taken in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, but not until the Council adopts a resolution approving the rulemaking, as required by section 17 of the Act (40 DCR 761).

Chapter 9 of Title 7 DCMR is amended as follows:

A new section 918 is added to read as follows:

918 ENHANCED PROFESSIONAL SECURITY

- 918.1 An employer shall pay the security officer working in an office building in the District of Columbia wages, or any combination of wages and benefits, that are not less than the combined amount of the minimum wage and fringe benefit rate for the guard 1 classification established by the United States Secretary of Labor pursuant to the Service Contract Act of 1965, approved October 22, 1965 (79 Stat. 1034; 41 U.S.C. § 351), as amended.
- 918.2 For purposes of this section, the term "office building" shall have the same meaning as provided in section 3(6A) of the Act (D.C. Code § 32-1002(6A)); provided that, the term shall be deemed not to include libraries, museums, universities, hospitals, hotels, restaurants, grocery stores, bank branches, package distribution centers, or residential apartments or condominiums.
- 918.3 For purposes of this section, the term "security officer" shall have the same meaning as provided in 17 DCMR § 2100.
- 918.4 In the case of mixed use property, if a portion of the property falls under the Act and the security officer is assigned to provide protection to the entire property, the security officer shall be deemed to fall under the provisions of the Act.

All persons wishing to comment on these proposed rules shall submit written comments no later than thirty (30) days after the publication of this notice in the *D.C Register* to Eugene Irvin, General Counsel, Department of Employment Services, 64 New York Avenue, N.E., 3rd Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained from the same address between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday, excluding holidays.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under section 302(14) of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14)), Mayor's Order 98-140, dated August 20, 1998, section 202(b) of the Medical Malpractice Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-263; D.C. Official Code § 7-161(b)), section 2 of the Adverse Event Reporting Requirement Amendment Act of 2008, effective March 20, 2009 (D.C. Law 17-0308; D.C. Official Code § 7-161 (d) (1)), and Mayor's Order 2008-25, dated February 8, 2008, hereby gives notice of his intent to take final rulemaking action to adopt the following amendment to Chapter 40 of Title 17 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The purpose of this amendment is to change the reporting time for adverse events, in accordance with section 2 of the Adverse Event Reporting Requirement Amendment Act of 2008, effective March 20, 2009 (D.C. Law 17-308; 56 DCR 27).

Chapter 40 (Health Occupations: General Rules) of Title 17 DCMR (Business, Occupations & Professions) is amended as follows:**Subsection 4017.4 is amended to read as follows:**

4017.4 Health care providers and medical facilities providing services in the District of Columbia shall submit a report of an adverse event to the System Administrator no later than 60 days after its occurrence.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be sent to the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained from the Department at the same address during the hours of 9:00 a.m. to 5 p.m., Monday through Friday, excluding holidays.

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302 (14) of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of his intent to take final rulemaking action to adopt the following amendment to Chapter 69 of Title 17 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The purpose of these changes is to clarify the types of continuing education credits that are acceptable as a prerequisite for renewal or reinstatement of a license.

Chapter 69 (Psychology) of Title 17 (Business, Occupations & Professions) (May 1990) is amended as follows:

Sections 6906.5 is amended to read as follows:

6906.5 To qualify for a license, a person in inactive status within the meaning of § 511 of the Act, D.C. Official Code § 3-1205.11 who submits an application to reactivate a license that has been inactive up to a maximum of two (2) years shall submit proof of having completed fifteen (15) approved continuing education credits for each inactive year. An applicant whose license was inactive for more than two (2) years shall retake and pass the District of Columbia jurisprudence examination (the District examination) and shall complete the number and type of continuing education credits required by Board which shall be determined on a case-by-case basis.

Sections 6906.6 is amended to read as follows:

6906.6 To qualify for a license, a person who submits an application for reinstatement of a license that has been expired up to a maximum of two (2) years shall submit proof of having completed fifteen (15) approved continuing education credits for each year the license was expired. An applicant whose license was expired for more than two (2) years shall retake and pass the District of Columbia jurisprudence examination (the District examination) and complete the number and type of continuing education credits required by the Board, which shall be determined on a case-by-case basis.

Sections 6906.7 is amended to read as follows:

6906.7 An applicant under this section shall prove completion of required continuing education credits by submitting with the application the following information with respect to each continuing education program or activity:

(a) The name and address of the sponsor of the program;

- (b) The name of the program, its location, a description of the subject matter covered, a complete schedule with time allotments for each topic or subtopic and lunch or breaks, and the name of each instructor or speaker;
- (c) The date(s) on which the applicant participated in the program;
- (d) The hours of continuing education credit claimed; and
- (e) A copy of the continuing education completion verification document that includes the sponsor's signature and seal.

6906.8 [REPEALED]

Section 6906.9 is amended to read as follows:

- 6906.9 A licensee shall complete three (3) continuing education credits in each of the following:
- (a) Ethics or risk liability; and
 - (b) Cultural competence.

Section 6907.2 is amended to read as follows:

- 6907.2 The Board may approve the following types of continuing education programs if the programs meet the requirement of § 6907.3:
- (a) A seminar or workshop;
 - (b) An education program given at a conference;
 - (c) In-service training; and
 - (d) An online or home study course; or
 - (e) An undergraduate or graduate course given at an accredited college or university provided that the undergraduate course shall be acceptable only if the Board determines that the course is required or needed by the licensee as an introductory component of a professional development plan for the purpose of entering an area of psychology for which the licensee is currently not qualified to practice independently.

Section 6907.3 is amended to read as follows:

6907.3 To qualify for Board approval, a continuing education program shall do the following:

- (a) Be current in its subject matter;
- (b) Be developed by qualified individuals of whom one shall be a psychologist;
- (c) Be taught or facilitated by at least one qualified individual; and
- (d) Meet one of the following requirements:
 - (1) Be administered by an accredited college or university;
 - (2) Be approved by a Board-recognized psychology organization, accredited health care facility, or other legally constituted organization; or
 - (3) Be submitted by the program sponsor to the Board for review no less than sixty (60) days prior to the date of the presentation and be approved by the Board before the program or activity starts. The program or activity shall include each of the following:
 - (A) The sponsor's name and address;
 - (B) The program's name;
 - (C) The location;
 - (D) A description and specific goals;
 - (E) The target audience's maximum size and professional level (Master's or doctorate);
 - (F) The program's tentative or actual schedule, including the allotted time for lunch, breaks and topic headings or subheadings;
 - (G) An appropriately constructed evaluation form and continuing education completion verification document;
 - (H) The name and credentials of each instructor or speaker including relevant education, training, research, publications, work samples(s), honor or awards, special recognition and, if applicable; and

- (I) The evaluation results of comparable programs or activities previously conducted.

Section 6907.4 is amended to read as follows:

6907.4 The Board shall maintain a list of approved continuing education programs on its website.

Section 6907.6 is amended to read as follows:

6907.6 The Board may approve the following continuing education activities:

- (a) Serving as an instructor or speaker at a conference, seminar, workshop, or in-service training;
- (b) Being the author or coauthor of an article (including “critiques” and “responses”) or a book review in a professional journal or periodical, or author or coauthor of a book or book chapter;
- (c) Serving as an editor (including “associate” and “junior” levels) for a professional journal, periodical or book;
- (d) Serving as an article reviewer for a professional journal or periodical; or
- (e) Having developed an online or home study continuing education course.

Section 6908.2 is amended to read as follows:

6908.2 For approved undergraduate or graduate courses taken for educational credit, each semester credit hour shall constitute five (5) continuing education credits and each quarter-hour credit shall constitute seven and one-half (7-1/2) continuing education credits.

6908.3 [REPEALED]

Section 6908.4 is amended to read as follows:

6908.4 The Board may grant a maximum of ten (10) continuing education credits per licensure period to an applicant who participates in one or more in-service education programs.

Section 6908.7 is amended to read as follows:

6908.7 The amount of continuing education credit that may be granted is fifty percent

(50%) of the amount of actual presentation time.

Add a new section 6908.11 to read as follows:

- 6908.11 The Board may grant continuing education credits for the following activities:
- (a) For serving as a reviewer of articles submitted for publication, one (1) continuing education credit may be granted for each article reviewed up to a maximum of three (3) articles;
 - (b) For providing a published critique or response to a published article, one (1) continuing education credit may be granted up to a maximum of three critiques or responses;
 - (c) For publishing an article, a maximum of three (3) continuing education credits may be granted;
 - (d) For publishing a book, a maximum of fifteen (15) continuing education credits may be granted;
 - (e) For serving as a co-editor of a published book, a maximum of fifteen (15) continuing education credits may be divided among the co-editors with each co-editor receiving at least three (3) continuing education credits;
 - (f) For publishing a book chapter, a maximum of three (3) continuing education credits may be granted;
 - (f) For reviewing a book, a maximum of three (3) continuing education credits may be granted;
 - (h) For serving as a senior editor for a journal or periodical, a maximum of twelve (12) continuing education credits may be granted;
 - (i) For serving as an associate editor for a journal or periodical, a maximum of : nine (9) continuing education credits may be granted;
 - (j) For serving as a junior (or comparable level) editor, six (6) continuing education credits may be granted;
 - (k) For serving as a speaker or instructor for a seminar, workshop, conference or in-service training, a maximum of six (6) continuing education credits per total presentation time may be granted; or
 - (l) For serving as a developer of an online or home study continuing education course, a maximum of three (3) continuing education credits per course may

be granted.

Add a new section 6908.12 to read as follows:

6908.12 A licensee shall receive no more than fifteen (15) continuing education credits for any combination of the activities listed in § 6908.11 or for completing any combination of online and home study courses.

Add a new section 6908.13 to read as follows:

6908.13 No continuing education credit shall be awarded for any activity of a licensee if either of the following is true:

- (a) The activity is an expected responsibility of a paid position held by the licensee (such as a professor on a tenure track publishing an article); or
- (b) The licensee received compensation for the activity (including honoraria) or the licensee shall receive compensation in the future.

Section 6999 is amended to read as follows:

6999.1 As used in this chapter, the following terms shall have the meanings ascribed:

Continuing education – an ongoing process consisting of formal learning activities that: (1) are relevant to psychological practice, education and science; (2) enable psychologists to keep pace with emerging issues and technologies; and (3) allow psychologists to maintain, develop and increase competencies to improve services to the public and enhance contributions to the profession.

Cultural Competence –refers to an ability to understand, communicate with, and effectively interact with people across cultures. Cultural competence comprises four components: (a) Awareness of one's own cultural worldview, (b) Attitude towards cultural differences, (c) Knowledge of different cultural practices and worldviews, and (d) cross-cultural skills.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not less than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be sent to the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4th Floor, Washington, D.C. 20002. Copies of the proposed rulemaking may be obtained from the Department at the same address during the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays.

DEPARTMENT OF HEALTH
NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302 (14) of the District of Columbia Health Occupations Revision Act of 1985 ("Act"), effective March 15, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14) (2007 Repl.) and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of his intent to take final rulemaking action to adopt the following amendments to Title 17 (Business, Occupations & Professions) (May 1990) of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The purpose of the amendments is to establish the procedures by which health professionals who are licensed, registered, or certified to practice shall obtain a criminal background check pursuant to the Licensed Health Professional Criminal Background Check Amendment Act of 2006., effective March 6, 2007, as amended by the Licensed Health Professional Criminal Background Check Amendment Act of 2006, effective March 6, 2007, (D.C. Law 16-222, D.C. Official Code § 3-1205.22 *et seq.*) (2007 Repl. and 2008 Supp.).

Title 17 (Business, Occupations & Professions) (May 1990) is amended as follows:

I. The table of contents is amended as follows:

A. A new chapter heading is added to read as follows:

**CHAPTER 85 LICENSED, REGISTERED, OR CERTIFIED HEALTH
PROFESSIONAL CRIMINAL BACKGROUND CHECKS**

B. Section headings for Chapter 85 are added to read as follows:

8500	General Provisions
8501	Background Check Requirement
8502	Fees
8503	Recordkeeping
8504	Out of State Applicants
8505	Unreadable Fingerprints
8506	Board Review
8599	Definitions

8500. GENERAL PROVISIONS

8500.1 These rules are promulgated pursuant to the "Licensed Health Professional Criminal Background Check Amendment Act of 2006", effective March 6, 2007, (D.C. Law 16-222, D.C. Official Code § 3-1205.22 *et seq.*) (hereinafter "the Act").

8500.2 Chapters 40 (Health Occupations: General Rules) and 41 (Health Occupations: Administrative Procedures) shall supplement this chapter.

8501 BACKGROUND CHECK REQUIREMENT

- 8501.1 Each applicant for an initial license, registration, or certification; renewal of a license, registration, or certification; reinstatement of a license registration or certification; or person going from an inactive status to active status shall obtain a criminal background check. An initial applicant for licensure, registration, or certification who does not undergo a criminal background check shall not be issued a license, registration or certification until the background check has been completed.
- 8501.2 Criminal background checks shall be conducted in accordance with Metropolitan Police Department (MPD) and Federal Bureau of Investigations (FBI) policies and procedures and in a FBI-approved environment, by means of fingerprint and National Criminal Information Center checks and procedures.
- 8501.3 The FBI criminal background check shall disclose the criminal history of the prospective applicant for the previous seven (7) years, in all jurisdictions within which the prospective applicant has worked or resided within the seven (7) years prior to the check. The MPD shall conduct a criminal background check that shall disclose misdemeanor violations, if any, of District law.
- 8501.4 An applicant who is obtaining a license, registration, or certification by endorsement shall not be required to undergo a criminal background check provided that a criminal background check was previously done on the applicant within four (4) years prior to the date of submission of the application.
- 8501.5 A licensee, registrant, or certification holder shall be required be to undergo a subsequent criminal background check every four (4) years from the date of the licensee's registrant's or certification holder's previous background check.

8502 FEES

- 8502.1 An applicant for a license, registration, or certification shall pay the processing fee that is established by the Health Professional Licensing Administration through rulemaking.

8503 RECORDKEEPING

- 8503.1 The Health Professional Administration shall maintain, in the personnel record of each applicant covered by these rules, the following:
- (a) The date of licensure, registration, or certification;

- (b) The date on which a criminal background check was requested;
- (c) The date on which the results of the criminal background check were received;
- (d) Official documentation of the criminal background check results;
- (e) Any sworn statements submitted by the applicant; and
- (f) Documentation of any actions taken against the applicant as a result of information obtained from the criminal background check.

8503.2 The Health Professional Licensing Administration shall not disclose criminal background check records obtained for the purpose of licensure, registration, or certification except:

- (a) To the Director or his or her designee during an official inspection or investigation of a facility;
- (b) To the person who is the subject of the criminal background check;
- (c) To comply with a court order; or
- (d) To any person, with the written consent and authorization of the person who is the subject of the criminal background check.

8504 OUT OF STATE APPLICANTS

8504.1 An applicant for a license, registration, or certification who is not domiciled in the metropolitan Washington, D.C. area shall do the following:

- (a) Request a fingerprint package from the Health Professional Licensing Administration;
- (b) Take the fingerprint card to the local or state police agency and be fingerprinted; and
- (c) Mail the completed fingerprint card in the supplied envelope to the Health Professional Licensing Administration.

8505 ILLEGIBLE FINGERPRINT CARDS

8505.1 If an applicant's fingerprint card is rejected two (2) or more times by the Metropolitan Police Department because the prints are unreadable, an

applicant shall come to the District of Columbia to have the Metropolitan Police Department conduct a fingerprint scan. The applicant shall be responsible for paying all costs associated with the scan.

8506 BOARD REVIEW

8506.1 Results of a criminal background check shall be forwarded to the Board regulating the health profession in which the applicant desires to be licensed, registered, or certified. The Board shall utilize the information contained in the criminal background check, along with other information supplied in the application, to make a determination as to whether the applicant shall be licensed, registered, or certified.

8599 DEFINITIONS

8599.1 For the purposes of this Chapter, the following terms shall have the meanings ascribed:

Act- Licensed Health Professional Criminal Background Check Amendment Act of 2006

Applicant – A person applying for a license, registration, or certification to practice a health profession in the District of Columbia.

Criminal background check -- an investigation into a person's history to determine whether, within the seven (7) years preceding the background check, the person has been convicted of a crime in the District of Columbia or in any other state or territory of the United States where such person has worked or resided.

Director - the Director of the Department of Health or his or her designee.

Health professional - a person who holds a license, certificate, or registration issued under the authority of this subtitle or the Act.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty days after the date of publication of this notice in the D.C. Register. Comments should be sent to the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained from the Department at the same address during the hours of 9:00 a.m. to 5 p.m., Monday through Friday, excluding holidays.

THE OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

The Acting State Superintendent of Education, pursuant to the authority set forth in Section 3 (b) of the District of Columbia State Education Office Establishment Act of 2000, (D.C. Law 13-176; D.C. Official Code § 38-2602 (b) (11) (2008 Supp.); and pursuant to the District of Columbia School Reform Act of 1995, effective April 26, 1996 (110 Stat.1321; D.C. Official Code § 38-1802.02 (19))(2008 Supp.); hereby gives notice of her intent to adopt an amendment to Section 3019, in Chapter 30 of Title 5 of the *District of Columbia Municipal Regulations* (DCMR), in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. This proposal supersedes the proposed revision of Section 3019 seeking public comment, which was published as an emergency/ proposed rulemaking for Section 3019 on April 24, 2009. The emergency rule remains in effect until it expires on August 12, 2009, or is superseded by the adoption of a permanent final rule, whichever occurs first. *See 56 DC Register 3230* (April 24, 2009).

The purpose of this proposed rule is to revise Title 5, Chapter 30, Section 3019 of the DCMR with a clear enunciation of charter schools' special education responsibilities under the Individuals with Disabilities Education Act, 20 USC §1400 *et seq.* (IDEA), and the District of Columbia School Reform Act of 1995, effective April 26, 1996 (110 Stat.1321; D.C. Official Code § 38-1802.02 (19))(2008 Supp.). The proposed revision to section 3019 makes changes to reflect current law including references to the Office of the State Superintendent of Education (OSSE), as the District of Columbia state education agency (SEA).

Recent experience indicates that there is confusion among charter schools, parents, and the student hearing office with regard to a charter school's special education responsibilities based upon its election under D.C. Official Code § 38-1802.02(19) of whether or not to have the District of Columbia Public Schools (DCPS) serve as the charter school's Local Education Agency (LEA) for purposes of IDEA and providing services to children with disabilities enrolled in their school. As a first step to address this situation, the OSSE revised Section 3019 with an emergency rule to clarify immediately a school's legal responsibilities based upon its election to function as an LEA or a DCPS charter school for special education purposes. These revisions were also published as proposed regulations at that time. This proposal builds on that emergency action with a comprehensive revision of Section 3019.

Federal and local law require all LEAs in the District of Columbia eligible for IDEA Part B funding ensure that all children with disabilities, ages three (3) through twenty-one (21) years of age, who are residents or wards of the District of Columbia, have available to them a free appropriate public education (FAPE). Under IDEA, an LEA must perform child find activities to identify and evaluate children who may have a disability and require special education and related services, develop Individualized Education Programs (IEPs) for eligible children, and provide special education and related services in the least restrictive environment (LRE), regardless of the nature or severity of the disability. An LEA must ensure that a continuum of alternative placements as defined by IDEA, is available to meet the needs of children with disabilities for special education and related services. Federal and District of Columbia laws and

regulations prohibit discriminatory practices by LEAs against children with disabilities. Failure to conform to these legal requirements may subject LEAs to sanctions, including discontinuation of federal funding under IDEA Part B.

Section 3019 of Chapter 30 of Title 5 of the DCMR is amended to read as follows:

3019 CHARTER SCHOOLS

- 3019.1 Enrollment in a public charter school shall be open to all residents and wards of the District of Columbia regardless of disability or special needs. A public charter school in the District of Columbia may not deny enrollment or otherwise discriminate in its admissions policies or practices on the basis of a child's disability or status as a child with special needs, the child's need or potential need for special education services, supplementary aids or services, or any other accommodation.
- 3019.2 Pursuant to D.C. Code § 38-1802.02(19), each public charter school shall elect to have the District of Columbia Public Schools (DCPS) serve as its Local Education Agency (LEA) for purposes of the Individuals with Disabilities Education Act (IDEA), 20 USC §1400 *et seq.*, (a District Charter), or shall be an independent Local Education Agency (an LEA Charter).
- 3019.3 *Responsibilities of LEA Charters.* Each LEA Charter is responsible for compliance with all requirements applicable to an LEA under the IDEA and its implementing regulations (34 C.F.R. §§ 300 *et seq.*), and local laws, regulations and state policies, including, without limitation, the following:
- (a) *Least Restrictive Environment.* An LEA Charter shall ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are non-disabled. Special classes, separate schooling, or other practices involving removal of children with disabilities from the regular education environment shall occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
 - (b) *Evaluation and Reevaluation.* An LEA Charter shall evaluate and reevaluate enrolled children in accordance with the IDEA, local law and state policy.
 - (c) *Special Education and Related Services.* An LEA Charter shall develop and implement an IEP for an eligible child within the timelines set by IDEA, local law and state policy, and shall provide special education and related services consistent with that IEP.
 - (d) *State-wide Assessments.* Consistent with Title 5 DCMR Chapter A23, each LEA in the District of Columbia must ensure the participation of all

of its children, including children with IEPs, in District-wide student assessments referred to as state-wide assessments to conform terminology to federal law and regulations . In particular, an LEA Charter shall:

- (1) Ensure that each of its District of Columbia resident children and wards, including those located in a nonpublic school setting, participates in the annual District-wide assessments (currently the District of Columbia Comprehensive Assessment System (DCCAS)), according to the procedures and guidelines issued by the Office of the State Superintendent of Education (OSSE).
 - (2) Administer the SEA-sponsored District-wide alternative assessment (currently the DCCAS ALT) only in the limited circumstances allowed under state-level guidelines and only to those children whose IEP specifically requires and deems the child eligible according to state-level guidelines for participation in the alternative assessment. Unless specifically required by a child's IEP, the DCCAS Alt may not be substituted for the DCCAS.
 - (3) Ensure that District-wide assessments are administered according to the OSSE's test security guidelines.
 - (4) Ensure that in the event a child enrolled in its school is located in a nonpublic special education school under procedures set forth in this Chapter, the child shall continue to participate in the DCCAS. Consistent with 20 U.S.C. § 6311 and the District's accountability workbook, the score of each LEA Charter child located in a nonpublic school shall be included in the calculations used for the state-wide assessment of the LEA Charter and the determination of Adequate Yearly Progress for the LEA Charter. *See also*, subsection 3019.4 below.
- (e) *Policies and procedures.* An LEA Charter shall ensure that its special education policies and procedures are consistent with state policies and procedures established under 34 CFR §300.101 through 300.163, and §300.165 through 300.174.
- (f) *Annual Reporting Requirements.* An LEA Charter shall conform to the annual reporting requirements of the IDEA.
- (1) Pursuant to 34 CFR §300.640 through §300.644, any LEA, including an LEA Charter shall count the number of children with disabilities receiving special education and related services on December 1 of each year and shall report and certify to the SEA each year the information required by section 618 of the IDEA no later than the date required by the OSSE (currently January 5).

(2) The LEA Charter shall certify to the SEA that the information provided under section 618 of the IDEA is an accurate and unduplicated count of children with disabilities receiving special education and related services.

- (g) *Special Education Data System (SEDS).* An LEA Charter shall fully utilize, implement and enter accurate and complete data into the state-designated District-wide special education data system (currently SEDS) for all aspects of special education practice, and ensure that an accurate, complete and up to date record exists in the SEDS for every child with an IEP enrolled in the LEA, including those located in a nonpublic school.
- (h) *Due Process Complaints.* An LEA Charter shall be responsible for providing the due process rights afforded children and their families under the IDEA and its implementing regulations and for responding to any due process complaint made in respect of a child enrolled in the LEA Charter, including any child who attends a nonpublic school.
- (i) *Mediation.* Pursuant to 34 C.F.R. §300.506, an LEA Charter shall ensure that policies and procedures are established and implemented to resolve disputes through the mediation process. The mediation process shall be available to a parent of a child enrolled in the LEA Charter, including any child who attends a nonpublic school.

3019.4 *Responsibilities of District Charters.* In the event that a public charter school elects pursuant to D.C. Official Code §38-1802.02(19), to have DCPS serve as its LEA for purposes of the IDEA, DCPS shall be the LEA responsible for meeting the requirements applicable to an LEA under the IDEA, Part B and its implementing regulations (34 C.F.R. §§ 300 *et seq.*), as well as all local laws, regulations and policies, in regards to the children enrolled in the District Charter. Each District Charter shall follow the policies, procedures and guidelines established by DCPS for the referral of individual child needs and IEP matters to DCPS to be addressed consistent with the requirements of IDEA. Referrals shall include, without limitation, requests for evaluations, due process complaints, requests for mediation and implementation of Hearing Officer Determinations, for all children enrolled in the District Charter. In addition, a District Charter shall:

- (a) *State-wide Assessments.* Consistent with 5 DCMR Chapter A23, each LEA in the District of Columbia must ensure the participation of all of its children, including children with IEPs, in state-wide assessments. In particular, a District Charter shall:
- (1) Ensure that each of its District of Columbia resident children, including those located in a nonpublic school setting, participates

in the annual District-wide assessments (currently the District of Columbia Comprehensive Assessment System (DCCAS)), according to the procedures and guidelines issued by the Office of the State Superintendent of Education (OSSE).

- (2) Administer the SEA-sponsored state-wide alternative assessment (currently the DCCAS ALT) only in the limited circumstances allowed under state-level guidelines and only to those children whose IEP specifically requires and deems the child eligible according to state-level guidelines for participation in the alternative assessment. Unless specifically required by a child's IEP, the DCCAS Alt may not be substituted for the DCCAS
 - (3) Ensure that state-wide assessments are administered according to the OSSE's test security guidelines.
 - (4) Ensure that in the event a child enrolled in its school is located in a nonpublic special education school under procedures set forth in this Chapter, the child shall continue to participate in the DCCAS. Consistent with 20 U.S.C. § 6311 and the District's accountability workbook, the score of each District Charter child located in a nonpublic school shall be included in the OSSE's calculation of results on the state-wide assessment for the District Charter and determination of Adequate Yearly Progress for the District Charter.
- (b) *Policies and procedures.* A District Charter shall ensure that its special education policies and procedures are consistent with state policies and procedures established under 34 CFR §300.101 through 300.163, and §§300.165 through 300.174.
- (c) *Annual Reporting Requirements.* A District Charter shall conform to the annual reporting requirements of the IDEA.
- (1) Pursuant to 34 CFR §300.640 through §300.644, a District Charter shall count the number of children with disabilities receiving special education and related services on December 1 of each year and shall report and certify to DCPS each year the information required by section 618 of the IDEA in sufficient time for DCPS to be able to report such data to the OSSE no later than the date required by the OSSE (currently January 5).
 - (2) The District Charter shall certify to DCPS that the information provided under section 618 of the IDEA is an accurate and unduplicated count of children with disabilities receiving special

education and related services, such that DCPS can make the same certification to the OSSE as required by the IDEA.

- (d) *Special Education Data System (SEDS).* A District Charter shall fully utilize, implement and enter accurate and complete data into the state-designated District-wide special education data system (currently SEDS) for all aspects of special education practice, and ensure that an accurate, complete and up to date record exists in the SEDS for every child with an IEP enrolled in the LEA, including those located in a nonpublic school.

3019.5 *Changes in enrollment.* Transfers between LEA Charters, District Charters and DCPS shall be conducted as follows, whether the change in enrollment is initiated by the parent or results from the procedures established by DCPS for District Charters:

- (a) In the event a child with a disability transfers from one LEA to another, the sending LEA shall provide a copy of the child's records to the receiving LEA, including any IEP for that child, within 10 days of receipt of notice of enrollment of the child in the receiving LEA.
- (b) The sending LEA and receiving LEA shall cooperate fully in the transfer of all child records.
- (c) In the event a child transfers between an LEA Charter, a District Charter or DCPS, after an evaluation or reevaluation process has begun, but prior to its conclusion, the receiving LEA shall be responsible for completing the evaluation process and fully implementing a resulting IEP in the event one is required. The sending LEA shall cooperate fully to ensure all relevant information follows a child to his or her new school.
- (d) Pursuant to 34 CFR 300.323(e), in the event a child with an IEP in effect transfers between an LEA Charter, a District Charter or DCPS, the receiving LEA is responsible upon enrollment for ensuring that the child receives special education and related services according to the IEP, either by adopting the existing IEP or by developing a new IEP for the child in accordance with the requirements of IDEA. The receiving LEA must implement any plan for compensatory education put into place by the sending LEA, a Hearing Officer Determination or Settlement Agreement, unless and until the receiving LEA agrees in writing with the parent to waive or modify it.

3019.6 *Agreements Between LEA Charters.* Pursuant to 34 CFR 300.208, any LEA, including an LEA Charter, may use its IDEA Part B funding to establish and implement cost or risk sharing funds, consortia, or cooperatives working in a

consortium with other LEAs to pay for high cost special education and related services.

- 3019.7 *IEP Team Recommendation.* If an IEP team at an LEA Charter recommends services for an enrolled child with a disability that the LEA Charter does not immediately have available, the LEA Charter is responsible for delivery of these services which may be arranged through an agreement with another LEA or through other appropriate resources to provide such services required by an IEP.
- 3019.8 *Maintaining Placement in the Least Restrictive Environment.* Pursuant to 34 CFR 300.114, no child enrolled in a public charter school shall be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.
- (a) *District Charters.* If a District Charter anticipates that it may be unable to meet its obligation to provide FAPE to a child with a disability currently enrolled in its program, it shall make an appeal to DCPS consistent with the policies, procedures and guidelines established by DCPS for District Charters.
 - (b) *LEA Charters.* If an LEA Charter anticipates that it may be unable to meet its obligation to provide FAPE to a child with a disability currently enrolled in its school:
 - (1) The LEA Charter shall contact the OSSE for technical assistance regarding the provision of FAPE to the child within the LEA Charter. The LEA Charter shall not initiate discussions regarding or otherwise participate in the placement or location of the child outside the LEA Charter prior to providing notice to the OSSE, and allowing the OSSE to make a recommendation regarding the ability of the LEA Charter to provide FAPE to the child within the LEA Charter.
 - (2) In the event that the IEP team for a child enrolled in the LEA Charter makes a placement decision that cannot be implemented within the LEA Charter, the OSSE shall make a location assignment for the placement of the child within 10 business days of the IEP Team's placement decision.
- 3019.9 *Placements from LEA Charters into Nonpublic Schools.* A child enrolled in an LEA Charter shall remain enrolled in the LEA Charter in the event that the child's location of services is changed to a nonpublic school (whether by reason of a Hearing Officer Determination, Settlement Agreement, or a location assignment by the OSSE), unless and until his or her parent re-enrolls him/her into another LEA (be it another LEA Charter, a District Charter or DCPS).

- (a) When a child enrolled in an LEA Charter is located in a nonpublic school in order to ensure the provision of FAPE, the LEA Charter shall:
 - (1) Transition the child back to the less restrictive and more integrated environment at the LEA Charter as soon as practicable;
 - (2) At all times while the child is located at the nonpublic school, maintain the capacity to serve the child at the LEA Charter immediately (i.e., hold an open seat for the child) unless and until the child's parent enrolls the child in another LEA; and
 - (3) Continue to monitor each child's progress at the nonpublic school.
- (b) To facilitate the return of the child, as soon as appropriate, to the charter school environment, the LEA charter may apply in writing to the Public Charter School Board for an increase in enrollment capacity above the limit set by the school's charter for each child enrolled in the LEA charter and receiving services at a nonpublic school.
- (c) In the event that an LEA Charter enrolled child with special needs attending a nonpublic school has not transitioned out of a nonpublic school within 120 days of the end of the school year in which the child will exceed the maximum age range for children served by the LEA Charter as specified in its charter, the LEA Charter shall:
 - (1) Provide written notification to the child's parent(s) or guardian(s) of their responsibility to enroll the child at another public charter school or into DCPS; and
 - (2) Shall provide such notification at least 90 days prior to the end of a school year.
- (d) Pursuant to 34 CFR 300.114 and 34 CFR 300.325(c), responsibility for compliance with Part B of IDEA and local law and regulations for a child located into a nonpublic school remains with the LEA in which the child was most recently enrolled (the sending LEA) – either an LEA Charter or, in the case of a District Charter, DCPS –unless and until the child's parent or guardian voluntarily re-enrolls the child into another LEA. Such responsibility includes, but is not limited to evaluating the child; attending IEP meetings, progress monitoring, assessments and accountability as required under the Elementary and Secondary Education Act, and developing a plan for the child's return from the nonpublic school to the LEA Charter.

3019.10

Hearing Officer Determinations and Settlement Agreements. An LEA Charter shall be responsible for implementation of every Hearing Officer Determination

and Settlement Agreement for any child enrolled in that LEA Charter (and for any child placed out of that LEA Charter to attend a nonpublic school), whether or not the LEA Charter was named and/or involved in the due process proceeding resulting in the Hearing Officer Determination or Settlement Agreement or a mediation resulting in a Settlement Agreement, unless and until the LEA Charter and parent or guardian agree in writing to waive or modify the requirements of the Hearing Officer Determination or Settlement Agreement.

3019.11 *DCPS Implementation Responsibility.* DCPS shall be responsible for implementation of every Hearing Officer Determination and Settlement Agreement for any child enrolled in DCPS or a District Charter, whether or not DCPS was named and/or involved in the due process proceeding resulting in the Hearing Officer Determination or Settlement Agreement or a mediation resulting in a Settlement Agreement, unless and until DCPS and the parent or guardian agree in writing to waive or modify the requirements of the Hearing Officer Determination or Settlement Agreement.

3019.12 *Definitions.* Except as otherwise stated herein, all terms used in this Section have the meanings assigned by DC Official Code § 38-2561 *et seq.* and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401 *et seq.*, and its implementing regulations, 34 C.F.R. Part 300.

Persons wishing to comment on this rule should submit their comments in writing to Kerri L. Briggs, PhD., Acting State Superintendent of Education, 441 4th Street, NW, Room 350N, Washington, D.C. 20001, Attn: Tameria Lewis. All comments must be received by the Office of the State Superintendent of Education not later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of this rulemaking may be obtained from the OSSE website at www.osse.dc.gov or upon request at the above referenced location.